

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

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| IN RE COMPLIANCE |) | PDC CASE NO: 00-873 |
| WITH RCW 42.17 |) | |
| |) | |
| King County Department of Transportation |) | REPORT OF INVESTIGATION |
| Ron Sims, King County Executive |) | |
| Doug Sutherland, Pierce County Executive |) | |
| Robert Drewel, Snohomish County Executive |) | |
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I.

BACKGROUND

- 1.1 On January 7, 2000, Shawn Newman filed a formal complaint with the Public Disclosure Commission (PDC) alleging violations of RCW 42.17.190 by the King County Department of Transportation, King County Executive Ron Sims, Pierce County Executive Doug Sutherland, and Snohomish County Executive Robert Drewel.
- 1.2 Shawn Newman alleged the following:
 - The respondents used public facilities to produce and mail a flyer entitled, "Make a fuss to save your bus!"
 - The respondents used public mailing lists to distribute the flyer promoting the event;
 - Recipients of the flyer were invited to a rally in Olympia to "tell the governor and legislature that people care about transit."
- 1.3 On November 2, 1999, voters in the State of Washington approved Initiative 695 (the \$30 car tab initiative), which was on the ballot as a statewide initiative. Initiative 695 replaced the annual Motor Vehicle Excise Tax, with a flat \$30 car tab fee. The Motor Vehicle Excise Tax provided funding for a number of state programs, as well as a number of county and local government programs such as transportation and transit funding, public health issues, and law, safety and justice issues.

II.

SCOPE

- 2.1 The following documents were reviewed:
- A. Notarized complaint letter from Shawn Newman dated January 7, 2000.
 - B. Copy of flyer “Make a fuss to save your bus!”
 - C. Pierce County response letter dated January 18, 2000, from Hudson Stansbury, Executive Counsel.
 - D. Snohomish County response letter dated January 19, 2000, from Robert J. Drewel, Snohomish County Executive.
 - E. King County response letter dated February 18, 2000, from Paul Tanaka, Deputy County Executive.
 - F. King County response letter dated March 24, 2000, from David W. Regnier, Senior Deputy Prosecuting Attorney.
 - G. Washington State Capitol Campus Facility Use Permit for Transit Services rally scheduled for January 10, 2000, from 12:00 PM to 1:30 PM.

III.

APPLICABLE LAW AND ADMINISTRATIVE RULES & DECLARATORY ORDERS

- 3.1 **RCW 42.17.190** states in part the following with regard to legislative activities of state agencies, other units of government, elective officials, employees:

“(2) Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying: PROVIDED,”

“This does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties: PROVIDED FURTHER, That this subsection does not apply to the legislative branch.

(3) Any agency, not otherwise expressly authorized by law, may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency: PROVIDED, That public funds may not be expended as a direct or indirect gift or campaign contribution to any elected official or officer or employee of any agency. For the purposes of this subsection, the term "gift" means a voluntary transfer of any thing of value without consideration of equal or greater value, but does not include informational material transferred for the sole purpose of informing the recipient about matters pertaining to official agency business. This section does not permit the printing of a state publication which has been otherwise prohibited by law. “

3.2 **RCW 42.17.020(26)** states the following:

"Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.”

3.3 **RCW 42.17.020(27)** states the following:

"Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.”

3.4 **Declaratory Ruling No. 14**

The petition asked for a ruling regarding the application of RCW 42.17.130 and RCW 42.17.190 to school district's activities relating to the support of or opposition to initiatives to the legislature. (See **Exhibit #1**) The ruling states in part:

“With respect to initiatives to the legislature that have been certified by the Secretary of State and are pending before the Legislature, the Commission determined in November of 1991 that lobbying by public agencies in support of or opposition to the passage of such initiatives does constitute normal and regular conduct since public agencies have specific statutory authority to lobby, and is permissible so long as the lobbying activities are limited to those allowed by RCW 42.17.190(2) and (3).”

“Reading these sections of law together, the Commission determines that a school district may only use public facilities to:

- a. “at the request of a legislator, respond to that legislator regarding any legislation before the legislature;**
- b. while using its proper official channels, initiate communications with the legislature concerning requests for legislative action or appropriations relating to the proper performance of the district's duties or other official business;**
- c. attempt to influence legislation, in addition to the types of communications specified in items 1 and 2 above, by providing information about official agency business or advocating the district's official position or interests to state or local elected officials or employees.”**

“Except as enumerated above, a school district may not directly or indirectly use public funds in an attempt to influence the outcome of legislation, including an initiative to the legislature while it is pending before the legislature. As such, school districts are banned from using public resources to undertake grass roots lobbying efforts. Based on the description of grass roots lobbying in RCW 42.17.200 and for purposes of this context, grass roots lobbying is interpreted to mean communicating with members or segments of the general public in a manner intended, designed or calculated to mobilize the general public to influence legislation. Generally, grass roots lobbying efforts encourage citizens to contact their legislators about matters that are or may be before the legislature.”

3.5 Declaratory Ruling No. 15

The petition asked for a ruling regarding the application of RCW 42.17.190 and whether any and all contact with legislators was considered “lobbying.” In addition, whether the use of gift funds or discretionary funds of the University of Washington constituted an expenditure of “public funds,” and whether the gift prohibition applies when no lobbying occurs. (See Exhibit #2) The ruling states in part:

“1. Lobbying under RCW 42.17.190 occurs when the person making the communication to an elected official, or officer or employee of any agency, intends to influence in a material way the adoption or rejection of specific proposed or reasonably anticipated bills, resolutions, motions, amendments, nominations, and other like matters before the state legislature.”

IV.

FINDINGS

- 4.1 On January 7, 2000, Shawn Newman filed a formal complaint with the Public Disclosure Commission (PDC) alleging violations of RCW 42.17.190 by King County Executive Ron Sims, Pierce County Executive Doug Sutherland, Snohomish County Executive Robert Drewel, and Representatives of the King County Department of Transportation. (See Exhibit #3)

The complainant alleged the Respondents used public facilities to produce and distribute a flyer entitled, “Make a fuss to save your bus!” which invited recipients of the flyer to attend a rally in Olympia to “tell the governor and Legislature that people care about transit.”

- 4.2 On December 16, 1999, a “News release” from King County Executive Ron Sims entitled “Sims supports Governor Locke’s post-695 proposals” was released. (See Exhibit #4) The press release stated the following:

“King County Executive Ron Sims said Governor Gary Locke’s proposed post Initiative 695 budget contains much needed support for the county’s transit, public health and law, safety and justice programs. Initiative 695, as passed in November, eliminated the motor vehicle tax which funds local governments’ transit, public health and law, safety and justice programs. King County’s loss was projected at \$127.7 million in 2001.”

“We are very hopeful all King County and other legislators will offer bipartisan support for these critical proposals that will be before them during the 2000 Legislative session. It will mean the difference between decimated regional services and a thoughtful prioritization of services over the next two years.”

“Proposals included in the governor’s budget as introduced today in Olympia that would have an impact on King County services include:

- **Transit—Following 695, with a two-year loss of \$157 million, Metro Transit was forced to announce a service reduction of one million hours, or one-third of the entire system over the next 18 months. For the first year, the governor’s proposal would provide \$100 million statewide for county transit agencies. The money would be allocated according to a formula giving each agency an amount proportional to lost revenues. This would amount, in King County to \$45.5 million.”**

“...The governor’s proposal is very responsible, and we are very appreciative of this effort and for the governor’s staff working with ours to achieve this important step. But in many cases, it is just a short term, one time temporary fix. Despite the Governor’s best attempts, we continue to be unable to address locally the very major transportation problems facing our region from roads to transit. We will be working with the public to fashion permanent solutions, but we strongly urge the Legislature to review this proposal in a very positive light, so we in local government can arrive at the best solution for shifting priorities to fund critical services.”

- 4.3 The flyer referred to in Mr. Newman’s complaint was sent out by King County Department of Transportation invited recipients to attend a public rally on January 10, 2000, in Olympia with King County Executive Ron Sims, Pierce County Executive Doug Sutherland and Snohomish County Executive Bob Drewel along with the Transportation Choices Coalition and others. **(See Exhibit #5)** The return address on the flyer was King County Department of Transportation, Community Relations, S. Jackson St., KCS-TR-0824, Seattle, WA 98104-3856. The rally was scheduled from Noon-1:30 PM, but a “Pre-rally briefing event” was scheduled for 10:00 AM across from the Capitol Campus. The flyer went on to state the following:

“Join us to tell the Governor and Legislature that people care about transit, transportation choices and the environment.”

Also included at the bottom of the flyer is the statement; **“Public rally to support transportation funding! Monday, Jan. 10, 2000 State Capitol Building.”**

- 4.4 On January 18, 2000, Hudson Stansbury, Pierce County Executive Counsel submitted a letter in response to the complaint. (See **Exhibit #6**) Mr. Stansbury stated the following in his response:

“... In late December 1999, Mr. Sutherland received a request from the office of Ron Sims, King County Executive, asking if Mr. Sutherland would attend and speak at a public event in Olympia regarding transportation issues. Mr. Sutherland agreed to do so and his assistant confirmed for him. Mr. Sutherland was otherwise unaware of any of the planning, organization or other arrangements pertaining to the event, including the existence of the referenced flyer. It therefore goes without saying that Mr. Sutherland did not cause any Pierce County funds or resources to be expended in its production or dissemination.”

- 4.5 On January 19, 2000, Snohomish County Executive Robert J. Drewel submitted a letter in response to the complaint. (See **Exhibit #7**) Mr. Drewel stated the following in his response:

“On January 10, 2000, a rally was held at the state capitol campus in Olympia. I was not involved with the planning of the event; it was promoted by the King County Department of Transportation (see return address on distributed flyer). To my knowledge, no Snohomish County resources were made available to promote the rally. I was not aware of the event until the morning of January 10, 2000 and was unable to attend.”

- 4.6 On February 18, 2000, King County Deputy County Executive Paul Tanaka submitted a letter in response to the complaint. (See **Exhibit #8**) In his letter, Mr. Tanaka states the following:

“Our review of Mr. Newman’s complaint indicates that the flyer to which he objected was mailed by the Department to certain persons who had previously indicated an interest in transportation matters. It was not reviewed or approved by the County Executive before it was sent.”

“The intent of the mailing was to notify interested persons of an opportunity to join local government officials in an event designed to call attention to the general problem of inadequate transit funding. In our opinion, this mailing was not an act of lobbying as defined by the statute. Even if the flyer could be construed to be a lobbying tool, however, we do not believe it was prohibited under RCW 42.17.190.”

4.7 On March 24, 2000, Senior Deputy King County Prosecuting Attorney David Regnier submitted a letter in response to our March 15th letter requesting additional information. (See **Exhibit #9**) Mr. Regnier stated the following in his response:

- **“A total of \$7,850.65 was spent on printing and mailing the flyer.**
- **The flyer was mailed to a list of people who have provided their names and addresses to the Department of Transportation via telephone, mail and at meetings conducted by the Department.**
- **The Department produced and mailed 20,337 flyers.**
- **Ron Posthuma, Deputy Director of the Department of Transportation, directed that the flyer be produced and mailed to inform interested persons of a transit related event in which county officials were participating.”**

4.8 On April 28, 2000, Senior Deputy King County Prosecuting Attorney David Regnier submitted a letter along with the quarterly Lobbying Report by State and Local Government Agencies (PDC Form L-5). (See **Exhibit #10**) Mr. Regnier stated that King County was sending in this report in connection with PDC Case No. #00-873, and continued with the following:

“Given that the underlying issues in said Complaint have not been decided, this report is being filed to avoid a potential second allegation (i.e. failure to report) arising from the same set of facts. As we have discussed, the County’s filing of this report will not be construed as conceding that this report is required to be filed or that the actions of County employees in relation to the rally on January 10 constituted lobbying under state law.”

“The enclosed report includes the cost of producing and mailing the flyer and, at your suggestion, the travel expense (estimated 120 miles @ \$.325) incurred for a round trip by five county staff members who traveled to the rally in a county van.”

The L-5 report submitted on April 28, 2000, by the King County Transportation Department listed \$7,889.65 in total expenditures for the quarter ended March 31, 2000. The \$7,889.65 included \$39.00 for the travel to Olympia, and \$7,850.65 for Brochures and Publications.

- 4.9 On December 27, 1999, the Lutheran Public Policy Office of Washington was granted permission by the Washington State Department of General Administration to use the Capitol Steps for a “Transit Services Rally” scheduled for Monday, January 10, 2000. The “Washington State Capitol Campus Facility Use Permit” indicated the Lutheran Public Policy Office of Washington was the sponsoring organization, that the location of the event was the Capitol Steps, that it was scheduled on January 10, 2000, between Noon-1:30PM, and the estimated attendance was listed at 100. (See Exhibit #11)
- 4.10 In all matters related to this investigation, King County Executive Ron Sims, Pierce County Executive Doug Sutherland, Snohomish County Executive Robert Drewel, and representatives of the King County Department of Transportation have cooperated fully.

Respectfully Submitted this 1st day of June, 2001.

Kurt Young
Chief Political Finance Specialist

List of Exhibits

- Exhibit #1:** PDC Declaratory Order No. #14, regarding the application of RCW 42.17.130 and RCW 42.17.190 to school district's activities relating to the support of or opposition to initiatives to the legislature
- Exhibit #2:** PDC Declaratory Order No. #15, regarding the application of RCW 42.17.190 to the University of Washington and whether any and all contact with legislators was considered "lobbying," whether the use of gift funds or discretionary funds of the University of Washington constitutes an expenditure of "public funds," and whether the gift prohibition applies when no lobbying occurs.
- Exhibit #3:** Complaint letter from Shawn Newman dated January 7, 2000.
- Exhibit #4:** December 16, 1999, "News release" from King County Executive Ron Sims entitled "Sims supports Governor Locke's post-695 proposals"
- Exhibit #5:** "Make a fuss to save your bus!" flyer.
- Exhibit #6:** Response letter from Hudson Stansbury, Pierce County Executive Counsel, dated January 18, 2000.
- Exhibit #7:** Response letter from Robert J. Drewel, Snohomish County Executive, dated January 19, 2000.
- Exhibit #8:** Response letter from Paul Tanaka, Deputy King County Executive, dated February 18, 2000.
- Exhibit #9:** Response letter from David W. Regnier, King County Senior Deputy Prosecuting Attorney, dated March 24, 2000.
- Exhibit #10:** Cover letter from David W. Regnier, King County Senior Deputy Prosecuting Attorney, and PDC Form L-5 report filed by King County Transportation Department on April 28, 2000.
- Exhibit #11:** Facility Use Permit issued by Department of General Administration to Lutheran Public Policy Office of Washington.